

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARGIE LIGON,)	
)	Case No. 01-cv-4286-JPL
Appellant/Defendant,)	
)	BK. No. 00-40426
vs.)	
)	Adv. No. 01-4020
MICHELLE VIEIRA, Trustee,)	
)	
Appellee/Plaintiff.)	

MEMORANDUM AND ORDER

This matter comes before the Court on appellant Margie Ligon's appeal of a decision by Bankruptcy Judge Kenneth J. Meyers of the United States Bankruptcy Court for the Southern District of Illinois in the adversarial proceeding numbered 01-4020 in connection with the Chapter 7 bankruptcy case of debtor Robert Ligon, bankruptcy case number 00-40426. Judge Meyers found that a transfer to Margie Ligon, Robert Ligon's mother, of a security interest in the assets of Nutrition Rich Products, Inc. ("Nutrition Rich"), a corporation that was deemed by Kentucky state courts to be the alter ego of Robert Ligon, was a voidable transfer under 11 U.S.C. § 547(b). As a consequence, Nutrition Rich's assets became a part of the bankruptcy estate. Margie Ligon does not take issue with any of Judge Meyers's findings of fact or conclusions of law regarding the transfer of the security interest. Instead, she contends that the Bankruptcy Court had no jurisdiction to make that determination because the situation presented no case or controversy under Article III of the Constitution.

The adversarial proceeding in this case was referred to the Bankruptcy Court under 28 U.S.C. § 157. Thus, this Court has jurisdiction to hear this appeal under 28 U.S.C. § 158(a)(1). Because this

appeal presents only issues of law, namely, whether the Bankruptcy Court had jurisdiction to rule in the adversarial proceeding, the Court reviews the Bankruptcy Court's ruling *de novo*. *In re Krueger*, 192 F.3d 733, 737 (7th Cir. 1999). The district court may affirm, modify or reverse a bankruptcy judge's judgment, order or decree or it may remand with instructions for further proceedings. Fed. R. Bankr. P. 8013.

The Court has reviewed the record on appeal, the briefs of appellant Margie Ligon (Docs. 3 & 7) and appellee Michelle Vieira ("Vieira"), trustee of the bankruptcy estate of Robert Ligon (Doc. 6).

Because the relevant facts and legal arguments of this case are well-presented in the parties' briefs, the Court finds that oral argument is unnecessary pursuant to Bankruptcy Rule 8012.

I. Facts

All parties agree on the relevant facts. In March 1998, Nutrition Rich purchased the assets of another corporation for approximately \$52,000. Margie Ligon funded the purchase and in return secured her loan with an interest in the assets of Nutrition Rich. A year and a half later, on September 2, 1999, she recorded that security interest. Six months after that, on March 6, 2000, Robert Ligon, Margie Ligon's son, filed for bankruptcy under Chapter 7.

In the meantime, the Circuit Court for McCracken County, Kentucky, was deciding whether a third party who held a judgment against Robert Ligon could collect that judgment from Nutrition Rich's assets. On September 6, 2000, the Kentucky court decided that Nutrition Rich was the alter ego of Robert Ligon and that Nutrition Rich's assets were available for satisfaction of the judgment. Robert Ligon appealed the decision, and that appeal is still pending. Enforcement of the Kentucky court judgment was not stayed pending appeal.

Back on the bankruptcy front, Vieira apparently took note that Robert Ligon and

Nutrition Rich were essentially the same entity according to the Kentucky court and decided that Nutrition Rich's assets were part of the bankruptcy estate. Under 11 U.S.C. § 547(b), she sought to avoid the transfer to Margie Ligon of the security interest in those assets by commencing the adversarial proceeding from which this appeal arises.¹ Margie Ligon asked Judge Meyers to hold the adversarial proceeding in abeyance until the resolution of Robert Ligon's state court appeal.² After holding a hearing on September 25, 2001, Judge Meyers declined to hold the adversary proceeding in abeyance, noting that the Kentucky court judgment was in effect and had not been stayed. On October 1, 2001, Judge Meyers entered an order finding that Margie Ligon's security interest was a voidable transfer and was therefore a nullity.

Margie Ligon filed this appeal on October 9, 2001, claiming that the Bankruptcy Court did not have jurisdiction over the adversarial proceeding. She believes that the dispute before the Bankruptcy Court was not ripe for ruling because there was no Article III case or controversy while the state court appeal was still pending. She reasons that, should the Court of Appeals of Kentucky overturn the trial court decision and find that Nutrition Rich is not the alter ego of Robert Ligon, there will be no justiciable issue involving Nutrition Rich's assets. In the absence of a final non-appealable judgment regarding alter ego status and a certain case or controversy in the Bankruptcy Court, Margie Ligon

¹After Margie Ligon recorded the security interest but before Robert Ligon filed for bankruptcy, Nutrition Rich sold its assets to another corporation, of which Robert Ligon's daughter is president, which is now paying Margie Ligon in installment payments over sixteen years. The Court refers to "Nutrition Rich's assets" for simplicity's sake but understands that Nutrition Rich may no longer possess the actual assets themselves.

²The Court is puzzled as to why Margie Ligon did not ask the Bankruptcy Court to dismiss the adversarial proceeding, the proper remedy where a court does not have jurisdiction, instead of asking it to merely hold the dispute in abeyance.

argues, the Bankruptcy Court did not have jurisdiction over the adversarial proceedings against her.

Vieira counters that the Kentucky judgment is in full force and has not been stayed pending appeal. Therefore, the Bankruptcy Court had no reason not to treat the Kentucky court's finding of alter ego status as final and as presenting a live controversy to the Bankruptcy Court.

II. Analysis

The Court finds that the doctrine of ripeness should not have prevented the Bankruptcy Court from hearing this adversarial proceeding. The doctrine of ripeness reflects constitutional limitations on a federal court's jurisdiction to hear cases and prudential considerations regarding whether to exercise jurisdiction. *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57, n. 18 (1993); *see Abbott Lab. v. Gardner*, 387 U.S. 136, 149 (1967). With respect to the constitutional question, Article III of the Constitution grants federal courts jurisdiction only over "cases" or "controversies." A federal court cannot render advisory opinions. *United States Nat'l Bank of Or. v. Independent Ins. Agents of Am.*, 508 U.S. 439, 446 (1993) (citing *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)); *accord Deveraux v. City of Chicago*, 14 F.3d 328, 330 (7th Cir. 1994). The requirement that there be a live controversy "keeps federal courts in the business of resolving existing legal disputes and out of the business of offering advice on the legality of a proposed course of action." *Deveraux*, 14 F.3d at 330. With respect to prudential considerations, a federal court should consider the hardship that would result to the parties if the court declined to exercise jurisdiction. *Abbott Lab.*, 387 U.S. at 149.

Judge Meyers correctly determined that there is a live controversy in this case. It is often difficult to determine whether an actual controversy exists; the distinction between a "controversy" and an abstract question of law is one of degree. *Deveraux*, 14 F.3d at 330 (citing *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). Consequently, there is no precise test for

determining if a complaint presents a controversy in the constitutional sense, and each case must be considered on its own facts. *Id.* However, the Supreme Court has given guidance as to when such a controversy exists:

The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests.... It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937).

In this case, there is a live controversy. Nutrition Rich conveyed a security interest to Margie Ligon in a manner that, if Nutrition Rich had been an individual filing for Chapter 7 bankruptcy like Robert Ligon, the transfer would have been voidable. Later, a Kentucky court determined that Nutrition Rich *was the alter ego of* or *was essentially the equivalent of* Robert Ligon. That judgment has not been set aside, reversed or stayed by any court of competent jurisdiction. It is, indeed, a valid, enforceable judgment regardless of the fact that it is on appeal. Vieira's suit to avoid Nutrition Rich's, and therefore Robert Ligon's, transfer to Margie Ligon followed from that judgment. In the face of that valid, enforceable judgment, the question presented by Vieira's adversarial bankruptcy proceeding is not merely an abstract question of law. On the contrary, it is definite and concrete because it asks the court to void a transfer on the basis of a valid, enforceable judgment. Therefore, Vieira's suit presents a live controversy over which federal courts have jurisdiction under Article III.

The prudential considerations in this case do not weigh so heavily in favor of Margie Ligon to prevent the Bankruptcy Court from addressing the controversy. First, until the resolution of the Kentucky case, which, as Judge Meyers noted in the September 25, 2001, hearing, may be years down the road in light of all the available levels of appeal, Robert Ligon's estate and his other creditors

would be deprived of money that, consistent with the Kentucky court's enforceable judgment, is rightly theirs now (or as soon as the Bankruptcy Court decides on a plan for dividing it). This is completely contrary to promoting orderly and expeditious bankruptcy proceedings, a fundamental goal of the Bankruptcy Code. *See In re Wade*, 991 F.2d 402, 409 (7th Cir. 1993); 11 U.S.C. § 704(1).

Furthermore, it appears from representations in the September 25, 2001, hearing that Vieira has discovered that Nutrition Rich's assets are now in possession of a corporation of which Robert Ligon's daughter is the president. The Court believes transfers of assets to corporations funded or controlled by intimate family members such as Robert Ligon's mother and daughter, in close temporal proximity to the pursuit of bankruptcy proceedings, can easily give rise to fears that a debtor is trying to keep assets from his bankruptcy estate and, in turn, from his creditors. At a minimum, such transfers make more difficult the tasks of sorting out whether such assets are part of the bankruptcy estate and of tracking them down if they are. These difficulties have the potential to multiply exponentially if transfers are allowed to continue unchecked during the pendency of the appeal of the Kentucky court judgment finding alter ego status.

It is true that the value of Nutrition Rich's assets in which Margie Ligon purports to have a security interest may be divided among other creditors before a final, non-appealable decision on the alter ego issue. Although possible, it will be difficult to recover the sums disbursed to the creditors if the final decision differs from the trial court decision. However, it is clear that Kentucky law provided a mechanism for Margie Ligon to obtain a stay of the Kentucky court's order pending its appeal. *See Ky. R. Civ. P. 62.03*. It appears from statements in Margie Ligon's reply brief that she was unable to obtain a stay because she did not post the appropriate bond. She cannot now complain because another court has chosen to treat the Kentucky judgment as valid and enforceable. For the foregoing

reasons, the Court finds that equitable and prudential considerations do not weigh in favor of dismissing this case on ripeness grounds.

In support of her position, Margie Ligon cites two cases: *McCord v. Agard (In re Bean)*, 252 F.3d 113 (2d Cir. 2001), and *T.A. Title Ins. Co. v. Lample, Sable & Makoroff (In re Marcus Hook Dev. Park, Inc.)*, 153 B.R. 693 (Bankr. W.D. Pa. 1993). *McCord* cites the general ripeness principles that the Court has already set forth but does not address the question of whether a judgment on appeal in another court renders a bankruptcy proceeding affected by that judgment unripe. *McCord*, 252 F.3d at 117-18. Similarly, *T.A. Title* cites general ripeness principles and mentions in passing that the liability for which the plaintiff sought reimbursement from the defendant had been settled and was "a final order that is no longer appealable now." *T.A. Title*, 153 B.R. at 701. Like *McCord*, it did not squarely address the question presented in this appeal. For these reasons, these cases are not persuasive.

In truth, it appears that ripeness is not a real issue in this case. Even if the Kentucky judgment had been stayed, the Bankruptcy Court would have had jurisdiction to address the question of whether Nutrition Rich was the alter ego of Robert Ligon, a question ripe for ruling because of the parties' real and concrete dispute over whether Nutrition Rich's assets are part of the bankruptcy estate. That the Bankruptcy Court chose to give the Kentucky judgment controlling weight on this issue, regardless of whether that deference was correct or wise, does not render the controversy unripe.

Because the Bankruptcy Court had jurisdiction under Article III to hear the adversarial proceeding and because prudential considerations did not indicate that the Bankruptcy Court should refrain from exercising its jurisdiction, Judge Meyers was correct in considering the case. As Margie Ligon objects to no other part of Judge Meyers's ruling, this ends the Court's inquiry. For these

reasons, the Court hereby AFFIRMS the decision of the Bankruptcy Court in adversarial proceeding and DIRECTS the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: May 9, 2002

/s/ J. Phil Gilbert
U.S. District Judge